

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

KINDER MORGAN LIQUIDS TERMINALS,
INC.¹

Employer

and

Case 21-RC-20595

PAPER, ALLIED-INDUSTRIAL, CHEMICAL
AND ENERGY WORKERS INTERNATIONAL
UNION, AND ITS LOCAL 8-675

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Kinder Morgan Liquids Terminals, Inc., is engaged in the business of transporting and storing energy products at terminals located in Carson and San Pedro, California. The Petitioner, Paper, Allied-Industrial, Chemical and Energy Workers International Union and its Local 8-675, filed a certification petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act to conduct a self-determination election to include the Operations Coordinators in the existing unit.

The sole issue presented is whether the Operations Coordinators share a sufficient community of interest with gaugers and head gaugers currently represented by Petitioner,

¹ The Employer's name appears as amended at the hearing.

in the existing Unit², to permit conducting a self-determination election. The Employer argues that the operations coordinators lack sufficient community of interest with the gaugers and head gaugers regarding wages, hours, and other terms and conditions of employment. The Employer maintains that the operations coordinators constitute a separate unit and should be excluded from the existing unit.

I conclude that the operations coordinators share a sufficient community of interest with the employees in the existing bargaining unit. Accordingly, I will direct an election among the four operations coordinators at the Carson facility to determine if they wish to be represented by the Petitioner in the current collective-bargaining unit.

Many considerations enter into a finding of community of interest. Some factors include: the degree of functional integration, Seaboard Marine, LTD., 327 NLRB 556 (1999); common supervision, Associated Milk Producers, 250 NLRB 1407 (1970); the nature of employee skills and functions, Overnite Transportation Co., 331 NLRB 662 (2000); interchangeability and contact among employees, J.C. Penny, 328 NLRB 766 (1999); general working conditions, Allied Gear & Machine Co., 250 NLRB 679 (1980); and fringe benefits, Allied Gear & Machine Co., *supra*.

All the relevant factors must be weighed in deciding whether disputed employees share a community of interest with other employees in a unit. Hotel Services Group, 328 NLRB 116 (1999). A difference in location of employment does not in itself demonstrate a lack of community of interest, especially where there is other evidence of a

² On April 13, 1987, the Petitioner was certified in Case 21-RD-2235 as the exclusive collective-bargaining representatives of the following unit: All employees of the Carson/Los Angeles Harbor California terminals employed by the Employer located at 2000 East Sepulveda Boulevard, Carson, California and at Berth 118-119, Los Angeles Harbor, California; excluding all office clerical employees, professional employees, engineers, technical employees, electronic technicians, rotating machinery technicians, systems specialists, managerial employees, guards, and supervisors as defined in the Act.

community of interest between two groups of employees. McCann Steel Co., 179 NLRB 635 (1969). A difference in supervision is not a per se basis for excluding employees from an appropriate unit. Texas Empire Pipe Line Co., 88 NLRB 631 (1950). The important consideration is the overall community of interest among the several employees.

The record discloses that the Employer operates a tank storage complex where it stores and transports petroleum products for various customers. The complex consists of facilities at three locations, one in Carson and two in San Pedro, California. The Carson facility receives petroleum products by pipeline, stores them in tanks and then transports them by either pipeline or truck to various customers throughout the Southwest.

Since the 1940s, the Union has represented employees of the Employer and its predecessor.³ The parties have had successive collective-bargaining agreements. The current agreement expires in April 2005. The unit consists of employees, called gaugers and head gaugers, whose job is to manually operate valves and pumps that enable the Employer to store and transport petroleum products for its customers. There are approximately 30 employees in the unit and they work at all three of the Employer's facilities.

In about 1987 the Employer created the position of operations coordinator because its operations were becoming increasingly automated. There are currently four operations coordinators and all are employed at the Carson facility in an office. While the operations coordinators and gaugers report to different immediate supervisors, the operations manager of the Carson facility is responsible for the operations coordinators, as well as the gaugers. Like the gaugers and head gaugers, the operations coordinators

³ The Employer took over the operations from GATX in about March 2001.

also are involved in the movement of petroleum products. While the gaugers and head gaugers cause the movement of petroleum products by manually operating valves and pumps, the operations coordinators do so remotely. They work at computer terminals where they operate valves and pumps in a totally automated system and monitor the flow of products through the pipeline. They also prepare the associated paperwork. In addition, they are directly accountable to customers and communicate with them by telephone.

Virtually all of the operations coordinators were previously employed as gaugers. Indeed, it appears that the line of progression is from gauger to head gauger to operations coordinator with operations coordinators having the greater job responsibilities. All of the training required to become either an operations coordinator or a gauger is on-the-job training. Both positions have the same entry level qualifications in that both require a high school diploma and no specialized degrees or training. While operations coordinators earn more than gaugers, they have similar benefits.

Both operations coordinators and gaugers work the same 12-hour shifts although the operations coordinators generally begin an hour earlier so that when gaugers make their shift change, work is ready for them. Operations coordinators do not have a great deal of contact with gaugers and head gaugers during their shifts. Most of the communication between operations coordinators occurs at the shift change when the orders are given. However, operations coordinators also give directions and orders during the shift to gaugers because gaugers do not make movements or open valves without direction from the operations coordinator. Communications is either in writing at shift

changes or by radio which may involve the operations coordinator summoning the gauger to the office during the shift.

I conclude that operations coordinators share a sufficient community of interest with the gaugers and head gaugers in the existing bargaining unit to warrant a self-determination election and do not constitute a sufficiently distinct group to warrant their establishment as a separate unit. Mount Sinai Hospital, 233 NLRB 507 (1977). I further find that, under the circumstances of this case, the principles established in The Budd Company Automotive Div., Detroit Plant, 154 NLRB 421 (1965) are applicable. Where, as here, the Petitioner already represents the existing larger unit, and in the absence of another labor organization seeking to represent the residual group of employees in a separate unit, the residual group may only be represented as part of the existing unit, after a self-determination election. Montgomery Ward & Co., Inc., 259 NLRB 280 (1981); Mount Sinai Hospital, supra.

A multitude of factors must be examined in evaluating community of interest determinations, including degree of functional integration, supervision, nature of employee skills and function, contact among employees, work situs, and general working conditions. An examination of these factors shows that the work of the operations coordinator is functionally integrated with the gaugers work at the Carson facility. The skills of the operations coordinators are similar to the skills employed by gaugers because virtually all the operations coordinators were previously employed as gaugers. While there was no evidence of employee interchange, there was a regular coordination of work, both at the shift change and by radio contact during the shift. Operations

coordinators also work essentially the same hours, at the same location and have similar working conditions and fringe benefits.

In examining community of interest factors, it is appropriate to place together employees who share some, but not all, factors. Space Mark, Inc., 325 NLRB 1140, 1141 (1998). Employees who perform work that is functionally related and part of the same integrated operation generally share a community of interest. Peco Energy Co., 322 NLRB 1074, 1085 (1997). When employees perform essentially the same function that historically was performed by unit employees, as here, they share a sufficient community of interest even though they perform their work in a different method made possible by technological advances. Premcor, Inc., 333 NLRB No. 164 (May 8, 2001). In these circumstances, operations coordinators share a sufficient community of interest to be included in the existing unit.

Findings and Conclusions

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a voting group which may vote whether or not they wish to be represented by the Petitioner in the existing unit:

All operations coordinators employed by the Employer at the Carson Terminal, located at 2000 East Sepulveda Boulevard, Carson, California; excluding all office clerical employees, professional employees, engineers, technical employees, electronic technicians, rotating machinery technicians, systems specialists, managerial employees, guards, and supervisors as defined in the Act.

Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Paper, Allied-Industrial, Chemical and Energy Workers International Union and Its Local 8-675**. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

If a majority of the valid ballots are cast for the Petitioner, the employees will be deemed to have indicated the desire to be included in the existing unit currently represented by the Petitioner, and the Petitioner may bargain for those employees as part of the unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated the desire to remain unrepresented. In that event, a certification of results will be issued.

Voting Eligibility

Eligible to vote in the election are those in the voting group who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Voting group employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

List of Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, located at 888 South Figueroa Street, 9th Floor, Los Angeles, CA 90017 on or before April 11, 2003. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (213) 894-2778. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to

notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EDT, on April 18, 2003. The request may **not** be filed by facsimile.

Signed at Los Angeles, California, this 4th day of April, 2003.

/s/William M. Pate, Jr.
William M. Pate, Jr.
Acting Regional Director
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